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IN THE

Supreme Court of The United States

OCTOBER TERM, 1963

NO. 559

ELCEE LUCAS, J. J. LANE
E. O. SIMPSON and E. D. JACKSON,

Appellants,

-v-

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission and TOM GREENE, individually,

Appellees.

On Appeal from the United States District Court
For the Middle District of Florida
Jacksonville Division

MOTION TO AFFIRM IN RESPONSE TO APPELLANT'S JURISDICTIONAL STATEMENT

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Comes now Tom Adams, Secretary of State of the State of Florida, one of the Appellees in the above-styled cause, and moves this Honorable Court to affirm the judgment now sought

to be reviewed for the reason that even a cursory examination of the judgment entered below will reflect that the questions on which the decision of this cause depends are so insubstantial as to need no further argument.

STATEMENT OF FACTS

The facts in the cause are not in dispute. The petitioners are duly qualified electors of the State of Florida residing in the Second Commissioner District of Duval County. The petitioner, E. D. Jackson, was an unsuccessful candidate for one of the seats in the reapportioned Florida House of Representatives. The Florida Legislature pursuant to the order of the Federal Three Judge Court in the case of *Sobel and Swann v. Adams* passed the reapportionment act on February 1, 1963, designated as Senate Bill 10-X and was approved by a Federal Three Judge Court in its order of February 7, 1963.

Pursuant to this reapportionment, the House of Representatives was increased from ninety-five (95) members to one hundred twelve (112) members. Duval County, under the reapportionment, was entitled to seven (7) members of the House of Representatives, where they had previously had three (3). Special elections were held to fill the four vacancies created by reason of the reapportionment. The plaintiff, E. D. Jackson, was, as previously stated, an unsuccessful candidate for one of these vacancies. The reapportionment made no provision for districting within a county and therefore under the election code of Florida, Chapter 101, Florida Statutes, all candidates would run at large from the county. The plaintiffs raised the question of the constitutionality of the reapportionment act by reason of its failure to provide for districting within a county.

"The main contention of the plaintiffs is that the apportionment act designated as Senate Bill 10-X, 1963, failed to divide the larger counties into representative districts based on population, notwithstanding the Apportionment of the House of Representatives under the act was based chiefly upon population number." (Page 6, Appellant's Jurisdictional Statement).

The defendants made a Motion to Dismiss and a Motion for Summary Judgment and on May 22, 1963, the Court granted the defendants' Motion to Dismiss and for Summary Judgment and dismissed the cause with prejudice on the grounds that the complaint failed to state a claim upon which relief could be granted. The plaintiffs filed a Notice of Appeal in this Court on the 19th day of July, 1963.

QUESTION PRESENTED

IN COUNTIES HAVING MORE THAN ONE (1) REPRESENTATIVE IN THE STATE HOUSE OF REPRESENTATIVES, IS FAILURE TO DIVIDE THE COUNTY INTO REPRESNTATIVE DISTRICTS, EACH DISTRICT HAVING ONE (1) REPRESENTATIVE, A VIOLATION OF RIGHTS GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION?

ARGUMENT

This case does not involve any question as to the civil liberties of the Negro race. We, therefore, fail to see the significance of the appellant's statement on page 6 of the Jurisdictional Statement as to their race, the number of negroes

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residing in Duval County and their relative voting strength within the county. The significance of the attention the appellants devote to their race is perhaps found in the ultimate purpose of this suit, which we must admit is a unique departure from the usual civil rights case. The appellants are, in essence, requesting that negroes residing in counties having more than one (1) representative in the State House of Representatives be segregated from the other citizens of the county by gerrymandering representative districts within the county in order that they might elect a negro representative. The end result of such a procedure would be the selection of representatives to the State House of Representatives on basis of the race of the constituents in the district rather than on the basis of the candidate's qualifications to serve all of the citizens of the county.

In the language of the Court below:

> "The plaintiffs here seek to recover on a theory under the United States Constitution that is novel and has never heretofore been found to afford the relief they seek . . ."

At large elections have been uniformly upheld as complying with requirements of both due process and equal protection. In the case of *Morris v. Wrighton*, 28 *Atlantic* 56, the Supreme Court of the State of New Jersey in an 1893 decision held that a constitutional requirement that members of the Legislature be elected by the legal voters of the county, was violated where districting within a county was by statute required. The effect of that decision was to state that anything other than at large elections was unconstitutional.

In the case of *State ex rel Davis v. Ramacciotti*, 193 S.W. 2d 617, the Supreme Court of Missouri held that the districting

of seven (7) Senatorial districts of the City of St. Louis did not constitute a racial discrimination depriving negro voters of their opportunity to exercise their group influences by splitting up the Negro vote among the district. In that case, it was alleged that the districting was in such a manner as to divide the negro vote in various districts so as to weaken the impact of their vote. It appears that the plaintiffs herein are seeking the converse to that alleged in the Davis case, and which would, in our judgment, be equally unpalatable constitutionally. The plaintiffs appear to desire districting which would be on the basis of race, which of course could not be sustained. In the language of the Court, quoting from page 619:

> "... Relator might contend with even more force that his race has been discriminated against if the heavy negro majority in the five contiguous wards mentioned had been confined in one new senatorial district. Then he probably would be maintaining that if that race vote influence had been distributed in senatorial districts which were close as between the two dominant political parties, it could have been exercised so as to control the nomination and election of senators in several districts instead of one. What the Negro has been objecting to is discrimination against his race whereby he is denied the same political and other privileges that are enjoyed by others. But here the color factor was disregarded and he was treated the same as any other voter."

How could the Negro voter be more clearly and more definitely and unequivocably treated the same as any other voter than in elections at large throughout the county, where his vote is neither confined into a district nor spread among

districts, either of which act might be used by the unscrupulous as an effort to weaken the influence of his ballot. In the case of *Alsup v. Mayhall, 208 Fed. Supp. 713*, it was held that in Alabama the act providing for the election of Congressional representatives at large did not violate the rights of a citizen of the State of Alabama as guaranteed by the Fifth and Fifteenth Amendments to the Federal Constitution. In the language of the Court at page 716:

> ". . . it is very readily seen that petitioner Alsup shows no discrimination, no unequal treatment and no arbitrariness in the State's action. If Alsup is (or was) entitled to vote in the primary, then he has an equal voice with the other electors in the district. If he is (or was) entitled to vote in the runoff primary, then he has an equal vote with other electors in the State. In the election to be held in this State in November, 1962, Alsup has a right to vote on the same basis as other electors in the State. The provision that every elector who votes in such election must vote for eight and only eight candidates for representatives in Congress binds every elector in the State.
>
> "Not only does Alsup fail to show arbitrariness on the part of the Alabama Legislature in enacting 'Act 154' (Senate Bill 224), but such a system as the Legislature for the State of Alabama is following in this instance has been stated to be the manner in which elections are to be held when there has been a reduction in the number of congressional seats within a state. *Smiley v. Holm*, 285 *U.S.* 355, 52 *S.Ct.* 397, 76 *L. Ed.* 795. That court, in holding the act of the Minnesota Legislature to be void, stated as follows:
>
> > '[I]n such a case [decrease in number of representatives], unless and until new districts

> are created, all representatives allotted to the State must be elected by the State at large. That would be required, in the absence of a redistricting act, in order to afford the representation to which the State is constitutionally entitled . . ."

"Accord, *Carroll v. Becker*, 285 *U.S.* 380, 52 *S. Ct.* 402, *76 L.Ed. 807 (1932); Koenig v. Flynn*, 285 *U.S.* 375, *52 S.Ct. 403, 76 L.Ed. 805 (1932).*"

The appellants admit that this Court has not ruled squarely on the alleged facts in this case. It is, however, their contention that this Court decided the issue which they raise in *Gray v. Sanders*, 83 *S.Ct. 801*, and that the opinion in Gray v. Sanders, supra, is the law which should govern the issues in this case. (See page 8, Appellant's Jurisdictional Statement). We cannot find in Gray v. Sanders any legal theory or language which would support the plaintiffs' contention that the opinion supports the plaintiffs' position. On the contrary the language of the opinion would appear to be more favorable to the defendant's position. Mr. Justice Douglas, speaking for the majority in that decision stated as follows:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit. This is required by the equal protection clause of the 14th Amendment. The conception 'we the people', under the constitution visualizes no preferred class of voters but equally among those who meet the basic qualifications. The idea that every voter is equal to every

> other voter in the state when he casts his ballot in favor of one or several competing candidates underlies many of our decisions."

Mr. Justice Stewart, in a concurring opinion stated as follows:

> "Within a given constituency, there can be room for but a single constitutional rule—one voter, one vote."

The geographical unit for which the representatives of the people are chosen in the State of Florida is the county. All qualified electors within the county—"whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit"—each has one vote, each voter is equal to every other voter within the county whenever he casts his ballot in favor of one or several competing candidates and, as requested by the plaintiffs, the home site of the voter within the county is not used as a basis for distinguishing between the qualified voters residing within the county. We believe that at large elections within a county are completely in accord with the requirements of the Fourteenth Amendment to the Federal Constitution and that, as a matter of democratic process, at large elections are more in keeping with the spirit of the Fourteenth Amendment than would be gerrymandered districting within the county.

CONCLUSION

We respectfully submit that in view of the matters submitted herein the order of the Lower Court sought to be reviewed is proper in all respects and the appellants present no question of substantial nature upon which the decision of of this Court would depend.

Respectfully submitted

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PROOF OF SERVICE

I, Joseph C. Jacobs, counsel for the Appellees herein, the Honorable Tom Adams, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of _____, 1963, I served copies of the foregoing Motion to Affirm Response to Appellant's Jurisdictional Statement on the parties herein named, by mailing copies in a duly addressed envelope, with postage prepaid, to: Honorable Releford McGriff, 411 Broad Street, Jacksonville 2, Flor-

ida, and Honorable Ernest D. Jackson, Sr., 410 Broad Street, Suite 208, Jacksonville, Florida, Attorneys for Appellants.

Joseph C. Jacobs
Assistant Attorney General

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